

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK SCHMIDT
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL NO. 21A-UI-05160-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37) – Temporary Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 8, 2021, reference 01, decision that denied benefits for the week that ended August 8, 2020, based on the deputy's conclusion that the claimant was working enough hours to be considered employed, was removed from the labor market, and therefore did not meet the "availability" requirement. After due notice was issued, a hearing was held on April 20, 2021. Claimant participated. Jessica Wade represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A, and the reference 01, reference 02, and reference 03 decisions.

ISSUES:

Whether the claimant was able to work and available for work during the week of August 2-8, 2020.

Whether the claimant was partially and/or temporarily unemployed during the week of August 2-8, 2020.

Whether the employer's account may be charged for benefits for the week of August 2-8, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by the University of Iowa Hospitals & Clinics as a nursing assistant. From the start of the employment until March 2021, the employment was full-time. During the period of full-time employment, the claimant worked three 12-hour shifts per week and an additional four-hour shift. During the week of August 9-15, 2020, the claimant was off work pursuant to a temporary layoff or furlough. The employer had no work for the claimant during the week that ended August 15, 2020 and paid no wages to the claimant for that week. During the week before the furlough, the week of August 2-8, 2020, the claimant worked his regular full-time work week, for which he was paid his regular wages. The claimant's hourly wage during the relevant period was \$14.29. The weekly wages totaled \$571.60. During the week that followed the furlough, the week of August 16-22, 2020, the claimant was on vacation pursuant to an earlier

request. Following his vacation week, the claimant returned to the same full-time employment under the same conditions.

The claimant established an original claim for benefits that was effective August 2, 2020. Iowa Workforce Development set the weekly benefit amount at \$320.00.

The claimant made a weekly claim for the week that ended August 8, 2020. For that week, the claimant reported that he was working, that he was able to work and available for work, that he had not refused any work, and that he has \$712.00 in wages. The wage report appears to have been erroneous and should have been \$571.60 or \$572.00. IWD did not pay benefits to the claimant for the week that ended August 8, 2020.

The claimant made a weekly claim for the week that ended August 15, 2020. For that week, the claimant reported that he was not working, that he was able to work and available for work, but that he earned no wages and received no vacation pay or holiday pay. IWD paid \$320.00 in regular benefits and \$300.00 in Lost Wage Assistance Payment (LWAP) for the week that ended August 15, 2020. The claimant discontinued his claim for benefits following the week that ended August 15, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

During the week of August 2-8, 2020, the claimant was working full-time and therefore did not meet the availability requirement. The claimant is not eligible for benefits for the week that ended August 8, 2020. The employer's account will not be charged for benefits for the week of August 2-8, 2020.

Because the February 8, 2021, reference 02, allowed benefits for the period beginning August 9, 2020, provided the claimant was otherwise eligible, and because the employer did not appeal that decision, the administrative law judge need not further address the claimant's eligibility for benefits for the period beginning August 9, 2020.

DECISION:

The February 8, 2021, reference 01, decision is affirmed. During the week of August 2-8, 2020, the claimant was working full-time and therefore did not meet the availability requirement. The claimant is not eligible for benefits for the week that ended August 8, 2020. The employer's account will not be charged for benefits for the week of August 2-8, 2020.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

April 23, 2021
Decision Dated and Mailed

jet/scn